

Remarks

Claims 16 and 17 are canceled without prejudice, claims 21 to 24 are added, and therefore claims 11 to 15 and 18 to 24 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Claims 11 to 16 and 19 to 20 were rejected under 35 U.S.C. § 102(e) as anticipated by Yuda et al., U.S. Patent Application No. 2002/0049534 ("Yuda").

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

While the rejections may not be agreed with, to facilitate matters, claim 1, as presented, now includes the features of claims 16 and 17, which are canceled without prejudice. Claim 18 now depends from claim 11, as presented, since claim 16 has been canceled.

The Yuda reference concerns an apparatus for navigating a moving object is provided for easing the action of an operator of the moving object. The apparatus has a map data acquiring section, a current position data acquiring section, an optimum route searching section for calculating an optimum route data from the map data, a forward map data acquiring section for generating a forward map data from the current position data and the optimum route data, a route navigation symbol data drawing section for generating a route

navigation symbol image from the forward map data, and a stereoscopic image displaying section for displaying a three-dimensional form of the route navigation symbol image. (See Abstract).

Accordingly, Yuda, does not identically describe (or suggest) the feature of “an arrangement for determining a traffic situation in front of the vehicle by sensing other vehicles in an area surrounding the guided vehicle; and an arrangement for adaptively controlling the movement of the guide object depending on the traffic situation.” As in claim 11.

The Office Action apparently relies on optimum routing techniques as being an arrangement for determining a traffic situation in front of the vehicle and adaptively controlling the movement of the guide object depending on traffic situation. (*Paper Number 20080729, p. 3*). It is respectfully submitted that determining an optimum route does not identically disclose (or even suggest) the feature of determining a traffic situation in front of the vehicle by sensing other vehicles in an area surrounding the guided vehicle.

In particular, optimum routing is calculated based on Dijkstra’s algorithm where the optimum route searching section may refer a traffic jam data received from an external source (such as, for example, the Vehicle Information and Communication System), in addition to the position data at the start point and the goal point to determine at real time the optimum route data. At best, Yuda merely refers to the receipt of position information such as GPS and external information source such as the Vehicle Information and Communication System. In stark contrast, the present claim senses other vehicles in an area surrounding the guided vehicle and determine a traffic situation in front of the vehicle with the sensing step. The Yuda reference specifically teaches away from the claimed subject matter as it does not support a sensor device sensing other vehicles, as provided for in the context of the presently claimed subject matter.

Furthermore, Yuda does not identically describe (or suggest) the feature of adaptively controlling the movement of the guide object depending on the traffic situation. In particular, a movement of the navigation symbol image with a car model, if any, depends entirely upon the current location of the vehicle itself. In order to activate the navigation symbol image 50 of Yuda, the vehicle itself must have arrived at a certain location. (Yuda, [0079]; [0081]). Even if Yuda may refer to activation of an image of a car model in accordance with the location of the vehicle, this does not identically describe (or suggest) an arrangement for adaptively controlling the movement of the guide object depending on the traffic information,

much less a traffic situation determined by sensing other vehicles in an area surrounding the guided vehicle, as provided for in the context of the presently claimed subject matter.

Accordingly, claim 11, as presented, is allowable, as are its dependent claims 12 to 15 and 18 to 20.

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) as unpatentable over Yuda reference in view of U.S. Patent No. 6,223,125 to Hall. ("Hall"). (*Paper Number 20080729, p. 4*).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Still further, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it must also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (*See Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); *In re Bond*, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the "problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem", *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 679 (Fed. Cir. 1998).

It is respectfully submitted that obviousness rejections without documentary evidence

“should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration.” MPEP § 2144.03(A). The Yuda reference does not disclose or suggest the present arrangement for determining the traffic situation sense other vehicles in an area surrounding the guided vehicle to determine the traffic situation and an arrangement for determining the traffic situation sense other vehicles in an area surrounding the guided vehicle to determine the traffic situation and an arrangement for ascertaining a highest permissible speed, wherein the ascertained highest permissible speed is used for determining the traffic situation as the Office Action essentially admits. (*Paper Number 20080729, p. 4*).

In accordance with MPEP § 2144.03(C) and 37 CFR § 1.104(d) (2), it is respectfully requested that an Examiner's affidavit should be provided to support the obviousness rejections as to the asserted steps (or items) that were present within the art at the time of the presently claimed subject matter. In particular, it is respectfully requested pursuant to 37 C.F.R. § 1.104(d)(2) that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the rejection is apparently based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions.

The Hall reference refers to a Collision Avoidance System prevents collisions between vehicles and vehicular collisions with pedestrians, trains, and stationary objects by monitoring, controlling, documenting, and reporting the speed and position of vehicles. The system guards against speeding violations, moving violations, and particular safety hazards by invoking a reduction of vehicle speed or by restricting vehicle movement to control its position. This is primarily accomplished with the activation of a controllable road perturbation. The system also monitors pedestrians, school bus loading/unloading, traffic density, trains, environmental conditions that may affect driving, and traffic control systems to determine the action to take for collision prevention. The capability to monitor various parameters that may indicate an impending collision or detect parameters that indicate that conditions are more favorable for a collision allows the system to monitor an entire traffic environment to anticipate and thus prevent those collisions. The system integrates and synchronizes with existing traffic control devices and systems to ensure that it reinforces the traffic laws and safety intent of the environment in which it is installed. Sensors detect the

status of objects within the traffic environment including the location and speed of vehicles..
(Hall, Abstract).

Accordingly, the Hall reference does not disclose nor suggest any of the features described above as to claims 17 and 18, and does not disclose nor suggest that the deficiencies of Yuda should be remedied or changed in any way to provide the presently claimed subject matter. Claims 17 and 18 are therefore allowable for essentially the same reasons as claim 11.

Accordingly, claims 11 to 15 and 18 to 20 are allowable.

As further regards the obviousness rejections, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that it simply does not describe the features discussed above of the rejected claims.

It is therefore respectfully submitted that Yuda and Hall taken alone or in any combination, do not describe or suggest the features of independent claim 11, as presented. Claims 12 to 15 and 18 to 20 depend from claim 11 and are therefore allowable for the same reasons.

New claims 21 to 24 do not add any new matter and are supported by the present application, including the specification. Claims 21 to 23 depend from claim 11, as presented, and are therefore allowable at least for the same reasons.

Additionally, new independent claim 24 includes the features of original claim 11 and the further feature of *an actual highest permissible speed arrangement to determine an actual highest permissible speed at a location, wherein the highest permissible speed is used to influence a velocity of the guide object so that it does not move more rapidly along the travel route than is allowed by the highest permissible speed at the location, so that the driver is deterred from exceeding the highest permissible speed.* This feature is disclosed and described at page 3, lines 12 to 18 of the original patent application as filed. The applied references simply do not in any way disclose or suggest this feature.

Accordingly, it is submitted that claims 11 to 15 and 18 to 24 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
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